U.S. Department of Labor

Office of Administrative Law Judges
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Issue date: 11Jul2002

CASE NUMBER: 2001-LHC-2464

OWCP NO.: 06-66431

IN THE MATTER OF

DAVID W. MOORE,
Claimant

v.

INGALLS SHIPBUILDING, INC.,
Employer

APPEARANCES:

Jessica Upshaw, Esq.
On behalf of Claimant

Paul B. Howell, Esq.
On behalf of Employer

Before: Clement J. Kennington
Administrative Law Judge

DECISION AND ORDER GRANTING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act (the Act), 33 U.S.C. § 901, *et seq.*, brought by David W. Moore (Claimant) against Ingalls Shipbuilding, Inc. (Employer). The issues raised by the parties could not be resolved administratively, and the matter was referred to the Office of Administrative Law Judges for a formal hearing. The hearing was held on May 13, 2002, in Mobile, Alabama.

At the hearing all parties were afforded the opportunity to adduce testimony, offer documentary evidence, and submit post-hearing briefs in support of their positions. Claimant testified

and introduced sixteen exhibits, which were admitted, including: a 1992 Decision and Order in Claimant's previous longshore claim; Correspondence controverting medical bills and treatment; various Department of Labor filings; medical records from Drs. Phillip A. Schaeffer, M.F. Longnecker, Jr., Diane Ross, Lawrence M. Martin, and David F. Sonego; two depositions of Dr. Phillip A. Schaeffer; and unpaid prescription and mileage bills.[1] Employer introduced ten exhibits at the hearing, which were admitted, including: various Department of Labor filings; referral letters, medical records of Drs. Phillip Schaeffer, Henry A. Maggio and David R. Price; various correspondence; and a list of medical payments since April 1993.

No post-hearing briefs were filed by the parties. Based upon the stipulations of the parties, the evidence introduced, my observation of the witness demeanor and the arguments presented, I make the following Findings of Fact, Conclusions of Law, and Order.

I. STIPULATIONS

At the commencement of the hearing the parties stipulated and I find:

1. The date of the accident/injury was February 10, 1982;

2. An employer-employee relationship existed at the time of the accident and the injury occurred in the course and scope of the employment;

3. Employer was advised of the injury on February 10, 1982;

4. Notice of controversion was filed on July 27, 2000, and August 11, 2000;

5. An informal conference was held on September 21, 1984, and on November 14, 1990;

6. Claimant's average weekly wage at the time of the injury was $321.53;

7. Employer paid:

Temporary total disability from February 10, 1982, through July 27, 1983;
Permanent total disability from July 28, 1983, through present, and continuing;
Medical Benefits were paid by Employer except for psychiatric expenses and medications since July 2000, and expenses of Dr. Diana Ross; and

8. Claimant is permanently and totally disabled with a date of maximum medical improvement

[1] References to the transcript and exhibits are as follows: Trial Transcript- Tr.__; Claimant's Exhibits- CX-__, p.__; Employer's Exhibits- EX-__, p.__; Administrative Law Judge Exhibits- ALJX-__, p.___.

of July 27, 1983.

II. ISSUES

The following unresolved issues were presented by the parties:

1. Causation of psychiatric condition since July 2000;

2. Liability for psychiatric bills since July 2000;

3. Authorization for medical treatment by Drs. Diana Ross and Phillip Schaeffer; and

4. Penalties, interest, and attorney's fees.

III. STATEMENT OF THE CASE

A. Chronology:

On February 10, 1982, Claimant fell approximately six feet from a scaffold injuring his legs, back, and neck. (EX 1, p. 3). Claimant underwent treatment with Dr. Longnecker, an orthopaedist, who also noticed that Claimant had open hostility and homicidal thoughts directed toward Employer. (CX 15, p. 1). Based on what Dr. Longnecker perceived to be reactive depression he referred Claimant to Dr. Martin, a psychiatrist, on April 16, 1985. *Id*. Dr. Martin's initial diagnostic impression was adjustment reaction with emotional features and personality disorder with paranoid and passive aggressive features. *Id*. at 2. Dr. Martin treated Claimant every three weeks for about a year and a half before relocating his practice and referring Claimant to Dr. Sonego. (CX 16, p. 1).

On December 26, 1986, Dr. Sonego, also a psychiatrist, concurred with Dr. Martin's assessment that Claimant was suffering from an adjustment reaction with emotional features. (CX 16, p. 1). Dr. Sonego also opined that Claimant would "need infrequent, but regular supportive psychotherapy in regards to his continuing sleeplessness, irritability, and difficulty coping with his physical impairments." *Id*. On December 14, 1988, Dr. Sonego referred Claimant to Dr. Ross, a neurologist, who specialized in chronic pain disorders. *Id*. at 2. The referral was necessary because of the "chronicity of his pain, his continued need for narcotic analgesics, and the degree of functional impairment which he continues to suffer." *Id*.

On January 24, 1989, Dr. Sonego indicated that he was only seeing Claimant one time per month for supportive psychotherapy, and related that Claimant was currently a candidate for outpatient chronic pain treatment under the care of Dr. Ross. (CX 16, p. 4). Dr. Sonego also opined that Claimant did not have a major affective disorder as of January 1989, but he continued to struggle with depression and anxiety related to his physical limitations. *Id*. On November 28, 1989, Dr. Sonego advised that he was relocating to Indiana and had referred Claimant to the care of another psychiatrist, Dr. Schaeffer. *Id*. at 6.

Dr. Schaeffer related that support psychotherapy should continue until Claimant began to express a desire to have a greater interruption in treatment and associated that desire with a feeling that he was no longer deriving any benefits from treatment. (CX 9, p 15). For the most part, Dr. Schaeffer's treatment was focused on keeping Claimant stable and Dr. Schaeffer did not expect to cure Claimant's psychiatric condition. *Id*. at 39. Claimant retained a great deal of residual anger and resentment as a result of his accident which was aggravated by litigation. *Id*.

Unable to settle with Employer concerning his entitlement to benefits, Claimant went before Administrative Law Judge Lee Romero and was adjudicated permanently and totally disabled on March 19, 1992. (EX 1, p. 16, 20). Judge Romero specifically determined that Claimant suffered from an adjustment disorder causally related to his workplace accident. *Id*. at 13. Pursuant to Section 7 of the Act, Judge Romero ordered Employer to pay for all reasonable and necessary medical expenses related to adjustment disorder/depression.

On October 19, 1995, Dr. Schaeffer stated that Claimant was dealing with his anger and frustration over bureaucratic entities, such as Employer's self-insurance program and the social security administration, and was learning to focus his anger appropriately and not displace it on others. (CX 7, p. 2). Dr. Schaeffer's clinical impression was that Claimant had an adjustment disorder with depressed mood, secondary to chronic pain and disability. *Id*.

On August 9, 1996, Dr. Maggio, a psychiatrist, conducted an "independent psychiatric evaluation" on behalf of Employer. (EX 9, p. 2). Dr. Maggio noted that Claimant was no longer openly hostile, assaultive or vindictive in speaking about Employer. *Id*. at 5. Dr. Maggio's diagnostic impression was that Claimant had adjustment disorder with depressed mood, resolved and compensated, and a personality disorder with features of paranoia, dependency, obsessive compulsiveness and histrionic disorder. *Id*. Dr. Maggio stated that Claimant's current psychological problems were related to his personality, which predated his accident. Continued psychiatric treatment was helpful to Claimant, but only because it helped his pre-existing personality disorder, and his adjustment and depression from his work-related accident had since been resolved and compensated making his current treatments not related to his workplace accident. *Id*. at 6.

In October 1996, Claimant presented to Dr. Schaeffer with feelings of depression and anger over Employer's cessation of payments for continued psychiatric treatment and its "less than helpful attitude" following Dr. Maggio's report. (CX 7, p. 21-22). In December 1997, Dr. Schaeffer noted Claimant was under increasing stress and upset over Employer's denial of benefits. *Id*. at 26. By

January 1998, however, Claimant felt triumphant that his attorney succeeded in reinstating his authorization to continue medical care under the condition that Claimant provide Employer with medical reports to substantiate any bill Employer was asked to pay. (CX 2, p.4; CX 7, p. 33). By February 3, 1998, however, Claimant was very upset because his chronic pain had become worse and Employer had a "bad attitude" exhibited by its refusal to pay for medications. *Id*. at 34.

On April 21, 1998, Claimant stated to Dr. Longnecker that he wanted to be treated by Dr. Ross and Dr. Longnecker wrote in his treatment notes: "Referred to Dr. Ross" for an appointment on June 4, 1998. (CX 12, p. 32). On that date, Claimant underwent a neurological consultation in relation to his chronic pain and headaches. (CX 12, p. 119; CX 13, p. 2). Because Claimant was "doing fairly well" with post-traumatic headaches, and they were treatable with prescription medication, Dr. Ross merely recommended a continuation of his medication and scheduled Claimant for a follow-up appointment a year later. *Id*. at 4. Employer refused to pay for this office visit and refused to pay for a second visit in June 199, which was also made on the referral of Dr. Longnecker. (Tr. 8; CX 12, p. 27).

On July 19, 2000, Dr. Price, a forensic psychologist, issued an opinion for Employer concerning Claimant's psychiatric treatment. (EX10, p. 24). Dr. Price noted that all of Claimant's treating psychiatrists were "willing to gratuitously attribute all of Mr. Moore's problems to his injury and chronic pain," an association that Dr. Price thought was clearly erroneous. *Id*. at 26. Dr. Price opined that Claimant had a multitude of psychological stressors that were totally unrelated to his cause of action and those stressors were sufficient to cause Claimant's depression and anxiety. *Id*. Specifically, Dr. Price related that Claimant's treating psychiatrists had overlooked personality disorders and have ignored Claimant's psychiatric history. *Id*. Thus, Dr. Price concluded: the majority of Claimant's psychiatric treatment was not necessary, appropriate or causally related to his 1982 workplace injury; Claimant's on-going psychiatric condition was due to other factors than his workplace accident; and Claimant was not psychiatrically disabled. *Id*. at 27. Although Claimant did have an adjustment disorder in the past, that reaction was in remission and was compensated at the time he saw Dr. Maggio on August 9, 1996. *Id*. at 45. Dr. Price also opined that Claimant had reached maximum medical improvement related to the adjustment disorder by December 16, 1986, while under the care of Dr. Sonego. *Id*.

On July 27, 2000, Employer wrote to Dr. Schaeffer enclosing the reports of Drs. Maggio and Price. (CX 3, p. 1). Employer related that Claimant's current treatment was unrelated to his 1982 workplace accident and that Employer would no longer authorize further treatment. *Id*.

On September 14, 2000, Dr. Schaeffer wrote to Claimant's attorney regarding Employer's termination of psychiatric benefits based on the report of Dr. Price. (CX 7, p. 124). Dr. Schaeffer reported that he had successfully treated Claimant by deflating his depressive symptoms, homicidal feelings, irritability, and social withdraw, which were all symptoms of his 1982 workplace accident. *Id*. Without continued treatment Claimant would be at risk to becoming more withdrawn, more depressed, more disabled, more uncomfortable, and less functional. *Id*. Dr. Schaeffer's continued impression was that Claimant suffered from improved adjustment disorder with depressed mood

participated by trauma, and severe chronic pain syndrome. *Id*. at 125. Claimant's recommended course of treatment was weekly psychotherapy. *Id*.

On January 25, 2001, Dr. Maggio conducted a second evaluation on behalf of Employer. (EX 9, p. 7). In preparing for his second evaluation, Dr. Maggio reviewed Claimant psychiatric records since 1996, the report of Dr. Price, and had a two hour office visit with Claimant. *Id*. Claimant acknowledged the fact that he had a personality disorder that pre-dated his accident, and that his personality disorder caused him to have anger, bitterness, resentment, and caused his vitriolic remarks. *Id*. at 8. Claimant related that his condition was aggravated by what he perceived as Employer's efforts to cause him grief and worry. *Id*. Dr. Maggio concluded that his impression from 1996 remained unchanged, and he encouraged Claimant to continue to see Dr. Schaeffer in relation to his personality disorder although that was not work related. *Id*. at 10.

On May 14, 2001, Claimant's attorney sought authorization from Employer for Claimant to seek Dr. Ross, relating that Claimant was having to pay for the treatment through Medicare due to Employer's failure to pay. (CX 4, p. 7).

On December 20, 2001, Dr. Schaeffer related that he continued to treat Claimant, but Claimant was forced to reduce the frequency of his visits to once every two weeks due to his limited finances after Employer had terminated his benefits. (CX 7, p. 126). As a consequence, Claimant had become more prone to depressive moods, typically precipitated by frequent bouts of diffuse pain, and Claimant found it harder to be more productive and do things that enhanced his morale. *Id*. The danger of failing to authorize weekly treatments was that Claimant's depression and anger, bordering on homicidal impulses, were subject to re-emergence to a crisis proportion. *Id*. On April 22, 2002, Dr. Schaeffer opined to a reasonable degree of medical probability that his treatment of Claimant from July 2000, to the present was reasonable and necessary and causally related to Claimant's 1982 workplace accident. (CX 14, p. 10).

B. Claimant's Testimony

Claimant testified that Employer stopped providing him with psychiatric treatment under Dr. Schaeffer in July 2000, and since that time Claimant paid for treatment by himself and through Medicare. (Tr. 13-14). Claimant was currently taking Prozac, Buspar and Propanolol which Dr. Schaeffer prescribed. (Tr. 14). Claimant also had to pay $33.00 per pill, out of his own pocket, for a prescription of Triazolam, and incurred mileage expenses each time he visits Dr. Schaeffer because it was a thirty-eight mile round trip. (Tr. 14-15). Claimant had a stockpile of medications that he was consuming since Employer cut benefits off in July 2000, but he estimated that he would run out in June 2002, and then would have to spend several hundred dollars a month for his medications. (Tr. 15).

Claimant testified that psychiatric treatment was a great benefit to him in dealing with his anger directed toward Employer for the way it treated him. (Tr. 16). Claimant related that he had two visits with Employer's psychiatrist, Dr. Maggio, lasting a total of three to four hours, and he

stated that he had never seen Employer's second expert, Dr. David Price, a psychologist. (Tr. 18). Dr. Price's opinion that Claimant was a malingerer was particularly upsetting to Claimant considering the earlier judicial determination that Claimant was permanently and totally disabled. (Tr. 21-22).

On cross-examination, Claimant stated that his hobbies included genealogy, knife making, and old engines. (Tr. 39-40). Claimant was also proud of his grandchildren, but sometime felt aggravated by them. (Tr. 41). Claimant further testified that he is an elected board member of the fire department and attends monthly meetings to run the department. (Tr. 43-44). Since suffering his workplace accident Claimant related that he faced several personal tragedies, such as the death of friends and family members, about which he talked extensively to Dr. Schaeffer, but had since overcome those tragedies. (Tr. 45). Claimant stated that Dr. Longnecker could no longer prescribed scheduled drugs due to trouble with state regulators and that is why he referred Claimant to Dr. Diane Ross, but subsequently, Claimant just received the same medications from Dr. Schaeffer. (Tr. 50-51).

D. Exhibits

(1) *Moore v. Ingalls Shipbuilding, Inc.*, 91-LHC-2926 (March 19, 1992) (Hon Lee. J. Romero).

On March 19, 1992, Judge Romero determined that Claimant's adjustment disorder and depression were causally related to Claimant's physical injuries that he sustained as a result of a workplace accident on February 10, 1982. (EX 1, p. 13, 16). Claimant failed, however, to sufficiently link his urological condition and alleged deterioration of his ankles, wrist and neck to that accident to establish a *prima facie* case of compensability for those injuries. *Id*. at 13-14. Regarding maximum medical improvement, Judge Romero determined that Claimant's physical condition stabilized on July 27, 1983, and that a date of maximum medical improvement for his psychological disorder was irrelevant as it did not prevent him from returning to work. *Id*. at 16. Crediting the opinion of Dr. Longnecker, Judge Romero determined that Claimant was unable to perform his former job and that Claimant was unable to perform any alternative employment identified by Employer, thus, Claimant was entitled to permanent total disability. *Id*. at 17.

Subsequently, a dispute arose between Claimant ad Employer in 1997 over the compensability of Claimant's psychiatric expenses following a psychiatric report of Dr. Maggio, and the case was set for a formal hearing. (CX 2, p. 3). The parties reached an agreement, however, filing a joint motion to remand to the district director on January 9, 1998, with the Claimant agreeing to provide medical reports to Employer to substantiate any bills the Employer was asked to pay. *Id*. at 3-4.

(2) Medical Records of Dr. Lawrence M. Martin

Dr. Martin, a psychiatrist, began to treat Claimant on April 16, 1985, on the referral of Dr. Longnecker, for evaluation of reactive depression. (CX 15, p. 1). Clamant related to Dr. Martin that he was without income because Employer had terminated his compensation benefits, and he resented

Employer's attempt s to rehabilitate him and place him in a number of minimum wage jobs. *Id*. Claimant wanted Employer to pay for an extensive education so that he could undertake a white collar job making comparable earnings. *Id*. Claimant reported irritability, low self-worth, homicidal aggressions, depression and anger. *Id*. Dr. Martin's impression was adjustment reaction with mixed emotional features, as well as a mixed personality disorder with paranoid and passive aggressive features, as a result of his workplace accident, and he recommended psychotherapeutic treatment. *Id*. On May 7, 1985, Dr. Martin noted that he may not be able to help Claimant in any more than a supportive way, and he opined that Claimant's anger toward Employer was justified and his pain was genuine. *Id*. at 3. On August 28, 1985, Dr. Martin related that there was nothing preventing Claimant from returning to any type of work from a psychiatric standpoint, as long as he was released to return to work from an orthopaedic standpoint. *Id*. at 10.

On January 2, 1986, Dr. Martin noted that nearly four years had passed since Claimant's accident and still there was no legal settlement. (CX 15, p. 16). Meanwhile Claimant's family continued to eke out a meager existence on the income of Claimant's wife. *Id*. Claimant continued to harbor bitterness toward Employer, its attorney, and its rehabilitation service. *Id*. Two hospitals were also proceeding against Clamant legally because of Employer's refusal to pay for Claimant's medical expenses. *Id*. Dr. Martin opined that the scenario was one "in which injustice is heaped on injustice in the wake of the accident four years ago." *Id*. Although a legal settlement was likely, Dr. Martin wondered how any amount of money could compensate Claimant for the psychological pain and anguish suffered as a result of the accident and subsequent events. *Id*. In a letter to Claimant's attorney on April 4, 1986, Dr. Martin opined that Claimant was "victimized" by Employer and that Claimant was "not a gold bricker, or a case of 'compensation neurosis' or a malingerer, or any other category of person trying to gain a financial windfall through vague symptoms." *Id*. at 20. Rather, Dr. Martin stated: "His symptoms are real, progressive, painful, disabling and no fault of his own." *Id*. In addition to treatment of his physical condition, Claimant's psychiatric morbidity "may prove to be long term and costly as well." *Id*.

(3) Medical Records of Dr. David F. Sonego

Subsequent to a planned move by Dr. Martin to Georgia, Claimant came under the care of Dr. Sonego, a psychiatrist. (CX 16, p. 1). On December 26, 1986, after two visits, Dr. Sonego agreed with Dr. Martin's assessment of adjustment reaction with emotional features. (CX 16, p. 1). Dr. Sonego also opined that Claimant would "need infrequent, but regular supportive psychotherapy in regards to his continuing sleeplessness, irritability, and difficulty coping with his physical impairments." *Id*.

On December 14, 1988, Dr. Sonego referred Claimant to Dr. Ross, a neurologist who specialized in chronic pain disorders. (CX 16, p. 2). The referral was necessary because of the "chronicity of his pain, his continued need for narcotic analgesics, and the degree of functional impairment which he continues to suffer. *Id*.

On January 24, 1989, Dr. Sonego indicated that he was only seeing Claimant one time per

month for supportive psychotherapy, and related that Claimant was currently a candidate for outpatient chronic pain treatment under the care of Dr. Ross. (CX 16, p. 4). Dr. Sonego also opined that Claimant did not have a major affective disorder as of January 1989, but he continued to struggle with depression and anxiety related to his physical limitations. *Id*. On November 28, 1989, Dr. Sonego advised that he was relocating to Indiana and had referred Claimant to the care of Dr. Schaeffer. *Id*. at 6.

(4) Medical Records and Depositions of Dr. Phillip A. Schaeffer

Dr. Schaeffer, a psychiatrist, began treating Claimant in 1990 in relation to psychological injuries stemming from his workplace accident. (CX 9, p. 9). In his 1992 deposition, Dr. Schaeffer related that support psychotherapy would no longer be needed or necessary if Claimant's began to express a desire to have a greater interruption in treatment and associated that desire with a feeling that he was no longer deriving any benefits from treatment. *Id*. at 15. Regarding Claimant's continuing care, Dr. Schaeffer opined that with continued treatment the odds were good that Claimant's condition would not deteriorate. *Id*. at 18. For the most part, treatment was focused on keeping Claimant stable, and Dr. Schaeffer did not expect a cure for Claimant's psychiatric condition. *Id*. at 39. Claimant had a great deal of residual anger and resentment that was aggravated by litigation. *Id*. In two years of treatment, Dr. Schaeffer had not noticed any signs of malingering. *Id*. at 21.

On October 19, 1995, Dr. Schaeffer wrote to Employer's claims adjuster that he had a good therapeutic relationship with Claimant where Claimant could "share conflicts, frustrations, and safely express concerns that would be excessively burdensome to family members." (CX 7, p. 2). Dr. Schaeffer stated that Claimant was dealing with his anger and frustration over bureaucratic entities, such as Employer's self-insurance program and the social security administration, and was learning to focus his anger appropriately and not displace it on others. *Id*. Dr. Schaeffer's clinical impression was that Claimant had an adjustment disorder with depressed mood, secondary to chronic pain and disability. *Id*.

In October 1996, Claimant presented to Dr. Schaeffer with feelings of depression and anger over Employer's cessation of payments for continued psychiatric treatment and its "less than helpful attitude" following the psychological evaluation of Dr. Maggio. (CX 7, p. 21-22). In December 1997, Dr. Schaeffer noted Claimant was under increasing stress and upset over Employer's denial of benefits. *Id*. at 26. By January 1998, however, Claimant felt triumphant that his attorney succeeded in reinstating his authorization to continue psychiatric treatment with Dr. Schaeffer. *Id*. at 33. Dr. Schaeffer related Claimant's need for ongoing treatment and stated that Claimant needed to avoid an increase in depression and anxiety. *Id*. By February 3, 1998, however, Claimant was very upset because his chronic pain had become worse and Employer had a "bad attitude" exhibited by its refusal to pay for medications. *Id*.

On April 4, 1998, Dr. Schaeffer noted that Claimant was beginning to enjoy his life and family again. (CX 7, p. 39). Throughout the summer and fall of 1998 Claimant related many activities to

Dr. Schaeffer, often expressing his difficulties with those activities in light of his disabilities. *Id*. at 48-52. By October 1998, Claimant again experienced anger, stress and aggravation over Employer's delay in making timely medical payments. *Id*. at 56. On November 4, 1998, Claimant related that he hoped to have his neurologist Dr. Ross reinstated by Employer to help treat him for his chronic pain. *Id*. at 57. On May 19, 1999, Claimant related that he was proud of some home improvement projects he had undertaken, that he was now caring for three of his grandchildren and discussed several of his hobbies with Dr. Schaeffer, relating that he was beginning to enjoy life more. *Id*. at 74. Any increase in activity, however, caused Claimant to "stove up" and would cause a period of inactivity. *Id*. at 76. Throughout 1999 and 2000 Claimant and Dr. Schaeffer discussed hobbies, family affairs, and periodic aggravations of chronic pain due to Claimant over-extending his physical abilities.

On September 14, 2000, Dr. Schaeffer wrote to Claimant's attorney regarding Employer's termination of psychiatric benefits based on the report of Dr. Price. (CX 7, p. 124). Dr. Schaeffer reported that he had successfully treated Claimant by deflating his depressive symptoms, homicidal feelings, irritability, and social withdraw, which were all symptoms of his 1982 workplace accident. *Id*. Dr. Schaeffer opined that Dr. Price abandoned all pretense of objectivity in an attempt to vilify Claimant. *Id*. Specifically, Dr. Price's impression that Claimant was a malinger was based on his observation that Claimant was a marginal member of mainstream society, had a poor work history, had poor credibility, was dishonest, and had anti-social, narcissistic or borderline personality disorder. *Id*. None of these factors had any merit and were not supported by Claimant's psychiatric records. *Id*. Without continued treatment Claimant was at risk to becoming more withdrawn, more depressed, more disabled, more uncomfortable, and less functional. *Id*. Dr. Schaeffer's continued impression was that Claimant suffered from improved adjustment disorder with depressed mood participated by trauma and severe chronic pain syndrome. *Id*. at 125. Claimant's recommended course of treatment was weekly psychotherapy. *Id*.

On December 20, 2001, Dr. Schaeffer related that he continued to treat Claimant, but Claimant was forced to reduce the frequency of his visits to once every two weeks due to his limited finances. (CX 7, p. 126). As a consequence, Claimant had become more prone to depressive moods, typically precipitated by his frequent bouts of diffuse pain, and Claimant found it harder to be more productive and do things that enhanced his morale. *Id*. The danger of failing to authorize weekly treatments was that Claimant's depression and anger, bordering on homicidal impulses, were subject to re-emergence to a crisis proportion. *Id*. Dr. Schaeffer was stunned that Employer so easily interrupted a court order for Claimant's treatment based on the opinion of a non-medical functionary. *Id*. The "bad faith" of Employer in not paying for his medical treatment as ordered by the court continued to plague Claimant, necessitating discussions with Dr. Schaeffer about "evil people in the word" such as terrorists. *Id*. at 164.

On April 22, 2002, the parties deposed Dr. Schaeffer a second time. (CX 14, p. 1). Dr. Schaefer opined to a reasonable degree of medical probability that his treatment of Claimant from July 2000, to the present was reasonable and necessary and causally related to Claimant's 1982 workplace

accident. *Id*. at 10. Dr. Schaefer elaborated:

> Mr. Moore continues to experience depression related to chronic pain syndrome. His degree of pain fluxuates, and there are times when he is more comfortable emotionally and other times when he does not feel like doing much, but then is depressed because he is much less productive.
>
> In addition, a factor in his depression throughout the course of his - - my treatment experiences with him has been the loss of his ability to feel productive in a working environment which he enjoyed and the loss of revenue, since he's no longer able to do that kind of work. He has worked hard in terms of being a patient and, as a result, he, when he is able to, participates in many personal, family, and community activities, so he does attempt to be as productive as possible, which tends to correlate with his morale.

(CX 14, p. 11).

Claimant was currently taking prescriptions of Trazodine and Halcion as sleep aids, Wellbutrin for depression and BuSpar for anxiety. (CX 14, p. 11). Dr. Schaeffer continued his recommendation from 1992 that Claimant would need psychiatric treatment and medications on an indefinite basis. *Id*. at 12. Employer's actions in unilaterally terminating benefits caused Claimant to harbor homicidal ideas about the institutions that control his benefits and the attorney associated with depriving him of those benefits. *Id*. at 13.

Regarding Dr. Price's assertion that Claimant and Dr. Schaeffer were talking about subjects that had no obvious bearing to the 1982 injury, Dr. Schaeffer explained that such a comment was misguided because Claimant was in therapy to understand and improve his emotional life which necessitated talking about everything in Claimant's life. (CX 14, p. 15-16). Furthermore, Dr. Schaeffer's notes do not reflect everything he spoke with Claimant about, and he would not make repetitive entries. *Id*. at 16. He did speak with Claimant on a frequent basis about his pain even though it was not recorded. *Id*. Additionally, Dr. Schaefer justified sessions about Claimant's family and friends because Claimant's ability to cope with emotional pressures was decreased as a result of his loss of ability to function secondary to chronic pain. *Id*. at 22.

Reviewing Dr. Maggio's report that Claimant's adjustment disorder and depressed mood had resolved, Dr. Schaeffer disagreed, stating that Claimant continued to have depression secondary to chronic pain which grew out of the accident. (CX 14, p. 18). Although Claimant is currently treating every other week due to financial constraints, Dr. Schaeffer stated that since Claimant had the reduction in therapy he became less active and not as productive. *Id*. at 34. While Dr. Schaeffer's treatment may have terminated with another individual with the same problems long ago, Dr. Schaeffer was guided by the reaction of Claimant to therapy and as long as it had a positive effect Dr. Schaeffer saw no reason to quit and worried that Claimant would regress if deprived of treatment. *Id*. at 31-32, 34. Dr. Schaefer also disagreed with Dr. Maggio's impression that Claimant had a

personality disorder because after so many years of dealing with disability and chronic pain people develop dependent, obstinate, stubborn, angry and paranoid traits, and one's personality is formed before the first grade. *Id*. at 34-35. Nevertheless, Dr. Schaefer admitted that based on Claimant's history he was predisposed to becoming susceptible to psychiatric trauma. *Id*. at 37.

Under the aggravation theory, Dr. Schaeffer stated that Claimant's adjustment disorder could be aggravated by other psychological pressures such as a death or marital difficulties. (CX 14, p. 35, 46). Dr. Schaeffer opined, however, that because Claimant was in treatment and because his mental state had improved, that such intervening causes of psychiatric problems were not any more traumatic for Claimant than for people in general. *Id*. at 36, 46. It would be impossible to "chop up" treatment so that he could address only the work-related psychiatric problems because recovering from a psychiatric injury required a treatment of the whole person. *Id*. at 47. Dr. Schaefer disagreed with Drs. Price and Maggio that Claimant's psychiatric condition concerning the effects of his workplace injury had resolved because Claimant continued to talk about depression secondary to chronic pain brought about by his injury. *Id*. at 38. Although Claimant could "survive" with less frequent contact with Dr. Schaeffer, Claimant would more likely "thrive" by having more frequent contacts. *Id*. at 40.

(5) Medical Records of Henry A. Maggio

On August 9, 1996, Dr. Maggio, a psychiatrist, conducted an "independent psychiatric evaluation" on behalf of Employer. (EX 9, p. 2). Employer wanted Dr. Maggio to issue an opinion concerning whether Claimant's current psychological problems and treatment were causally related to his 1982 accident or whether Claimant was in treatment for personal or family problems. *Id*. Dr. Maggio based his opinion off the records of Drs. Martin, Sonego, and Schaeffer as well as his personal examination. *Id*. Dr. Maggio noted that Claimant was no longer openly hostile, assaultive or vindictive in speaking about Employer. *Id*. at 5. Dr. Maggio's diagnostic impression was that Claimant had adjustment disorder with depressed mood - resolved and compensated - and a personality disorder with features of paranoia, dependency, obsessive compulsiveness and histrionic disorder. *Id*. Dr. Maggio stated that Claimant's particular problems were related to his personality which predated his accident. Continued psychiatric treatment was helpful to Claimant, but only because it helped his pre-existing personality disorder. *Id*.

On January 25, 2001, Dr. Maggio conducted a second evaluation on behalf of Employer. (EX 9, p. 7). In preparing for his second evaluation, Dr. Maggio reviewed Claimant psychiatric records since 1996, the report of Dr. Price, and had a two hour office examination of Claimant. *Id*. Claimant acknowledged the fact that he had a personality disorder that pre-dated his accident, and that his personality disorder caused him to have anger, bitterness, resentment, and caused his vitriolic remarks. *Id*. at 8. Claimant related that his condition was aggravated by what he perceived as Employer's efforts to cause him grief and worry. *Id*. Dr. Maggio observed that Claimant's speech was not focused on victimization, anger or bitterness and he was no longer openly hostile, assaultive or vindictive. *Id*. at 9. Rather Claimant's mood was euthymic. *Id*. Dr. Maggio reiterated that his 1996 impression remained unchanged, and he encouraged Claimant to continue to see Dr. Schaeffer

in relation to his personality disorder although it was not work related. *Id*. at 10.

(6) Medical Records of Dr. David R. Price

On July 19, 2000, Dr. Price, a forensic psychologist, issued a $2,880.00 opinion for Employer concerning Claimant's psychiatric treatment. (EX 8, p. 10; EX10, p. 24). Dr. Price stated that Claimant alleged permanent and total disability due to "reactive depression" secondary to his 1982 injury. (EX 10, p. 24). Dr. Price noted that all of Claimant's treating psychiatrists "are willing to gratuitously attribute all of Mr. Moore's problems to his injury and chronic pain," an association that Dr. Price though was clearly erroneous. *Id*. at 26. Dr. Price opined that Claimant had a multitude of psychological stressors that were totally unrelated to his cause of action and those stressors were sufficient to cause Claimant's depression and anxiety. *Id*.

Dr. Price related that Claimant's treating psychiatrists had overlooked personality disorders and had ignored Claimant's psychiatric history. (EX 10, p. 26). After reviewing Claimant's psychiatric records, Dr. Price's impressions were:

> 1. The majority of Mr. Moore's psychiatric treatment has not been medically necessary, appropriate or causally related to the work injury of 1982.
>
> 2. There are numerous alternative etiologies for Mr. Moore's on-going complaints that are more likely than the cause of action to be preserving his symptom presentation.
>
> 3. There is no documentation that any psychiatric provider ever deemed Mr. Moore to be disabled related to his psychiatric condition.
>
> 4. There is no documentation that Mr. Moore would currently meet guidelines as provided in the Guides to the Evaluation of Permanent Impairment, Fifth Edition.

(EX 10, p. 27).

Dr. Price stated that at some point in time Claimant likely met the diagnostic criteria for adjustment disorder following his knee injury and surgery. (EX 10, p. 43). Generally an adjustment disorder appears within three months of the stressor and persists no longer than six months. *Id*. The maladaptive nature of the reaction is indicated by either an impairment in social or occupational functioning or by symptoms that are in excess of a normal or expected reaction. *Id*. The adjustment reaction may last longer in cases where it is related to a chronic stressor - such as a disabling medical condition - or continuing emotional and financial difficulties. *Id*. The fact that Claimant's adjustment disorder persisted for such a long time was most likely due to the "persistence and addition of other psychosocial stressors unrelated to the cause of action, combined with Mr. Moore's inflexible and maladaptive personality traits." *Id*. at 45. Most likely Claimant' adjustment disorder was in remission and compensated for at the time he saw Dr. Maggio on August 9, 1996. *Id*. Dr. Price also opined

that Claimant had reached maximum medical improvement related to the adjustment disorder by December 16, 1986, while under the care of Dr. Sonego. *Id*. Furthermore, had Claimant been more compliant in 1989 with the multi-disciplinary pain treatment team he could have reached a higher level of adaptation related to his chronic pain and disability. *Id*.

Dr. Price did not think that Claimant's continued treatment was either necessary or appropriate because adjustment disorder was usually a temporary condition. (EX 10, p. 46). In May 1985, Dr. Martin stated that he could do little more than act in a supportive manner and in December 1986, Dr. Sonego felt Claimant had achieved maximum benefit from his medications and felt continued psychotherapy should be infrequent. *Id*. at 46-47. Appropriate psychotherapy should have focused on: adoption to disability, re-adjustment to altered life role, enlargement of social contacts, provisions for productive use of time, and increasing psychological independence to the greatest possible degree. *Id*. at 48. Continued treatment at this late date merely reinforced Claimant's symptoms and fueled secondary gain factors. *Id*.. Dr. Price clearly thought Claimant was interested in secondary gain as reflected in Dr. Martin's May 7, 1985 treatment note that claimant would not undertake any work until a legal settlement was reached. *Id*.

Dr. Price did not think that Claimant's present symptom presentation and preservation was related to his workplace accident in 1982. (EX 10, p. 50). Stressors facing Claimant include middle age, marital, occupational , physical, and parenthood changes. *Id*. Claimant is also faced with the reality of being the primary care-giver to some of his grandchildren and is faced with associated custody disputes. *Id*. at 51. Claimant was predisposed to suffer from stress because he was a poor man with little education and little vocational opportunity. *Id*. Dr. Price listed numerous stressors in Claimant's life, pre and post-accident that could cause an adjustment disorder apart from the 1982 workplace accident:

Pre-Accident	Post-Accident	
Severe knee injury	Chronic pain	Failure to achieve academic and occupational goals
History of severe alcoholism	Martial discord	Acute back strain
History of marriage/divorce/remarriage	Relational problems	Noncompliance with treatment
History of unstable employment	Bereavement	Phase of life problem
History of low academic achievement	Co-dependency	Chronic medication use
	Household repair	Quit smoking/loose weight
	Severe drought	Spouse with severe perimenopausal symptoms
	Custody dispute	Religious problems
	Chronic health problems	

(EX 10, p. 52).

Dr. Price also explained that in his opinion Claimant did not have major depression, but more

likely had Dysthymic Disorder, or an inborn tendency to experience a depressed mood. (EX 10, p. 54-55). Such a disorder had an "insidious onset" and becomes crystalized when there is an element of secondary reinforcement. *Id*. at 55. Additionally, Dr. Price opined that Claimant was malingering because an attorney was actively involved in his case, Claimant complained of ongoing chronic symptomology despite ongoing treatment, and Claimant exhibited a lack of cooperation in not complying with physical therapy and in failing to disclose all his pain medications. Dr. Price concluded:

> The only psychiatric diagnosis in this case that is causally related to the work accident is that of an Adjustment Disorder. This diagnosis, with proper treatment, would be expected to resolve within a very brief period of time, It is most likely that in the instant case, the Adjustment Disorder related to the work-place accident has resolved. Symptoms are being maintained by unrelated psychosocial stressors and underlying Personality Disorders. Treatment is being continued for litigation building reasons.

(EX 10, p. 78) (emphasis in original).

(7) Medical Records of Dr. M. F. Longnecker

Dr. Longnecker, an orthopaedist, began treating Claimant following his 1982 workplace accident. (CX 12, p. 1). On April 21, 1998, Claimant indicated to Dr. Longnecker that he wanted to see Dr. Ross for treatment and Dr. Longnecker indicated in his treatment notes that he had referred Claimant for an appointment with Dr. Ross on June 4, 1998. *Id*. at 29. On June 25, 1999, Dr. Longnecker referred Claimant to see Dr. Diana Ross a second time for a follow up examination. *Id*. at 27. In a letter, dated May 13, 2002, to Employer's counsel, Dr. Longnecker explained that he made the referral "for evaluation/disposition of chronic pain and migraine headaches." *Id*. at 119. Dr. Longnecker further stated that his referral "was probably as a direct result of the tension related to his original injuries." *Id*. Further, Dr. Longnecker related that he also referred Claimant to a psychiatrist to help with stress management. *Id*.

As of August 23, 1999, as Dr. Longnecker opined that Claimant's condition was stable and that there was nothing more he knew that could help Claimant. (CX 12, p. 30). Dr. Longnecker indicated that Claimant was under the care of Dr. Schaeffer for his psychiatric condition and under the care of Dr. Ross. *Id*. at 30. On December 20, 2001, Dr. Longnecker opined that Claimant needed to continue seeing Dr. Schaeffer for psychiatric support to treat Claimant's chronic depression. *Id*. at 26, 31.

(8) Medical Records of Dr. Diana Ross

Dr. Ross, a neurological pain management specialist, began treating Claimant at Gulf Coast Community Hospital's Pain and Treatment Center in February and March 1989, diagnosing Claimant with chronic pain syndrome. (CX 12, p. 77-78). Claimant did not see Dr. Ross again until June 4,

1998, when he underwent a neurological consultation in relation to his chronic pain. (CX 13, p. 2). Claimant reported to Dr. Ross that he had severe headaches that occurred about once a month and lasted for twenty-four hours. *Id*. Dr. Ross related that Claimant was undergoing treatment with Drs. Longnecker, Rubenstein and Schaeffer, but was referred to her to see if she could offer any suggestions about Claimant's headaches. *Id*. Because Claimant was "doing fairly well" with post-traumatic headaches, and they were treatable with prescription medication, Dr. Ross merely recommended a continuation of his medication and scheduled Claimant for a follow-up appointment a year later. *Id*. at 4.

IV. DISCUSSION

A. Credibility

It is well-settled that in arriving at a decision in this matter the finder of fact is entitled to determine the credibility of the witnesses, to weigh the evidence and draw his own inferences from it. *Banks v. Chicago Grain Trimmers Association, Inc.*, 390 U.S. 459, 467, 88 S. Ct. 1140, 1145-46, 20 L. Ed. 2d 30 (1968); *Atlantic Marine, Inc. and Hartford Accident & Indemnity Co. v. Bruce*, 661 F.2d 898, 900 (5th Cir. 1981); *Todd Shipyards Corporation v. Donovan*, 300 F.2d 741, 742 (5th Cir. 1962). A claimant's discredited and contradicted testimony is insufficient to support an award. *Director, OWCP v. Bethlehem Steel Corp.*, 620 F.2d 60, 64-65 (5th Cir. 1980); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129, 131 (1988); *Sylvester v. Bethlehem Steel Corp.*, 14 BRBS 234, 236 (1981).

Based on the record as a whole, and my observation of the witness' demeanor at the hearing I find that Claimant made a credible witness. First, Claimant was adjudicated permanently and totally disabled by Judge Romero in 1992. (EX 1, p. 17). Second, Dr. Martin, a psychiatrist, stated on January 2, 1996 that Claimant was "not a gold bricker, or a case of 'compensation neurosis' or a malingerer, or any other category of person trying to gain a financial windfall through vague symptoms." (CX 15, p. 20). Rather, Dr. Martin stated: "His symptoms are real, progressive, painful, disabling and no fault of his own." *Id*. Likewise, Dr. Schaeffer stated that he had not noticed any signs of malingering. (CX 9, p. 21). Neither did psychiatrists Sonego and Maggio relate that Claimant was engaging in any secondary gain behavior. Only Dr. Price, a psychologist, related that Claimant was a malinger and he based that conclusion on the fact that Claimant was a marginal member of mainstream society, had a poor work history, had poor credibility, was dishonest, and had anti-social, narcissistic or borderline personality disorder. (CX 7, p. 124). Dr. Price never met with Claimant. As related by Dr. Schaeffer, who had over ten years of contact with Claimant, all of the factors Dr. Price relied on were not applicable to Claimant. *Id*. I give more weight to the opinions of Drs. Martin and Schaeffer, both treating psychiatrist who had numerous and repeated contact with Claimant, than to Dr. Price. In total, I find that the Claimant made a credible witness and I entitle his testimony to its full evidentiary value.

B. Causation

C(1) Section 20 Presumption

Section 20 provides that "[i]n any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary - - (a) that the claim comes within the provisions of this Act." 33 U.S.C. § 920(a) (2000); *Kubin v. Pro-Football, Inc.*, 29 BRBS 117, 119 (1995); *Addison v. Ryan Walsh Stevedoring Co.*, 22 BRBS 32, 36 (1989); *Leone v. Sealand Terminal Corp.*, 19 BRBS 100, 101 (1986). To rebut the Section 20(a) presumption, the Employer must present substantial evidence that a claimant's condition is not caused by a work related accident or that the work related accident did not aggravate Claimant's underlying condition. *Port Cooper/T Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 287 (5th Cir. 2000); *Gooden v. Director, OWCP*, 135 F.3d 1066, 1068 (5th Cir. 1998). Under the aggravation rule, an entire disability is compensable if a work related injury aggravates, accelerates, or combines with a prior condition. *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812, 814-15 (9th Cir. 1966); *Kubin*, 29 BRBS at 119.

C(1)(a) Prima Facie Case

To establish a *prima facie* claim for compensation, a claimant need not affirmatively establish a connection between work and harm. Rather, a claimant has the burden of establishing only that: (1) the claimant sustained physical harm or pain; and (2) an accident occurred in the course of employment, or conditions existed at work, which could have caused the harm or pain. *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984); *Sewell v. Noncommissioned Officers' Open Mess McChord Air Force Base*, 32 BRBS 27, 128 & n.1 (1997) (finding that "physical harm or pain" encompasses psychological injuries for the purpose of applying the Section 20(a) presumption). Once this *prima facie* case is established, a presumption is created under Section 20(a) that the employee's injury arose out of employment. Here, a considered decree was entered in 1992 by Judge Romero that Claimant suffered a workplace injury which, in addition to physical injuries, caused psychological injuries of adjustment disorder and depression. Thus, Claimant had already established a *prima facie* case for compensation. Claimant has established a *prima facie* case of causation after July 2000 because Dr. Schaeffer related that Claimant continued to suffer a psychological harm or pain related to the 1982 workplace accident. (CX 7, p. 125).

C(2) Rebuttal of the Presumption

"Once the presumption in Section 20(a) is invoked, the burden shifts to the employer to rebut it through facts - not mere speculation - that the harm was not work related." *Conoco, Inc.*, 194 F.3d at 687-88 (citing, *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995)); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141, 144 (1990); *Smith v. Sealand Terminal*, 14 BRBS 844 (1982). The Fifth Circuit further elaborated:

To rebut this presumption of causation, the employer was required to present

> *substantial evidence* that the injury was not caused by the employment. When an employer offers sufficient evidence to rebut the presumption--the kind of evidence a reasonable mind might accept as adequate to support a conclusion-- only then is the presumption overcome; once the presumption is rebutted it no longer affects the outcome of the case.

Noble Drilling v. Drake, 795 F.2d 478, 481 (5th Cir. 1986) (emphasis in original). *See also*, *Conoco, Inc., v. Director, OWCP*, 194 F.3d 684, 690 (5th Cir. 1999)(stating that the hurdle is far lower than a "ruling out" standard).

Here, Employer presented substantial evidence sufficient to rebut Claimant's *prima facie* case of causation. Specifically, Dr. Maggio stated in 1996, and again in 2001, that Claimant's adjustment disorder had been fully treated and was now "resolved and compensated." (EX 9, p. 6, 10). Likewise, Dr. Price stated that Claimant's adjustment disorder had likely resolved by 1986, and Claimant's associated depression was pre-existing as part of an inborn Dysthymic Disorder. (EX 10, p. 45, 54-55). Accordingly, Employer presented substantial evidence to overcome Claimant's *prima facie* showing that his psychiatric condition after July 2000 was causally related to his employment.

C(3) Causation Based on the Record as a Whole

Once the employer offers sufficient evidence to rebut the Section 20(a) presumption, the claimant must establish causation based on the record as a whole. *Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1981). A claimant may be fully compensated for an employment injury which aggravates, accelerates or combines with a pre-existing condition. *Crawford v. Equitable Shipyards, Inc.*, 11 BRBS 646 (1979). If based on the record, the evidence is evenly balanced, then the employer must prevail. *Director, OWCP v. Greenwich Colleries*, 512 U.S. 267, 281 (1994).

C(3)(a) Experts Relating Claimant's Psychological Condition to his 1982 Workplace Accident

In this case Dr. Martin opined that Claimant suffered from adjustment reaction with mixed emotional features as a result of his workplace accident and while Claimant's anger toward Employer was genuine and justified, he would not be able to help Claimant outside of a supportive capacity. (CX 15, p. 1, 3). In a letter to Claimant's attorney on April 4, 1986, Dr. Martin opined that Claimant was "victimized" by Employer and that Claimant was "not a gold bricker, or a case of 'compensation neurosis' or a malingerer, or any other category of person trying to gain a financial windfall through vague symptoms." *Id*. at 20. Rather, Dr. Martin stated: "His symptoms are real, progressive, painful, disabling and no fault of his own." *Id*. In addition to treatment of his physical condition, Claimant's psychiatric morbidity "may prove to be long term and costly as well." *Id*.

Dr. Sonego agreed with Dr. Martin's assessment of adjustment reaction with emotional features. (CX 16, p. 1). Dr. Sonego also opined that Claimant would "need infrequent, but regular supportive psychotherapy in regards to his continuing sleeplessness, irritability, and difficulty coping

with his physical impairments." *Id*. On January 24, 1989, Dr. Sonego indicated that he was only seeing Claimant one time per month for supportive psychotherapy, and opined that Claimant did not have a major affective disorder as of January 1989, but he continued to struggle with depression and anxiety related to his physical limitations. *Id*. at 4.

Likewise, Dr. Schaeffer stated on September 14, 2000, that Claimant suffered from an improved adjustment disorder, with a depressed mood precipitated by trauma, and severe chronic pain syndrome as a result of his workplace accident. (CX 7, p. 125). In his 1992 deposition Dr. Schaeffer stated that with continued treatment the odds were good that Claimant's condition would not deteriorate. (CX 9, p.18). For the most part, treatment was focused on keeping Claimant stable, and Dr. Schaeffer did not expect a cure for Claimant's psychiatric condition. *Id*. at 39. Claimant had a great deal of residual anger and resentment that was aggravated by litigation. *Id*. In two years of treatment, Dr. Schaeffer had not noticed any signs of malingering. *Id*. at 21. Throughout Dr. Schaeffer's many years of treatment he and Claimant discussed hobbies, family affairs, and periodic aggravations of chronic pain due to over-extending Claimant' s physical abilities. On April 22, 2002, Dr. Schaeffer opined to a reasonable degree of medical probability that his treatment of Claimant from July 2000, to the present was reasonable and necessary and causally related to Claimant's 1982 workplace accident. (CX 14, p. 10). Dr. Schaefer elaborated:

> Mr. Moore continues to experience depression related to chronic pain syndrome. His degree of pain fluxuates, and there are times when he is more comfortable emotionally and other times when he does not feel like doing much, but then is depressed because he is much less productive.
>
> In addition, a factor in his depression throughout the course of his - - my treatment experiences with him has been the loss of his ability to feel productive in a working environment which he enjoyed and the loss of revenue, since he's no longer able to do that kind of work. He has worked hard in terms of being a patient and, as a result, he, when he is able to, participates in many personal, family, and community activities, so he does attempt to be as productive as possible, which tends to correlate with his morale.

(CX 14, p. 11).

Dr. Schaeffer continued his recommendation from 1992 that Claimant would need psychiatric treatment and medications on an indefinite basis. (CX 14, p. 12). Employer's actions in unilaterally terminating benefits caused Claimant to harbor homicidal ideas about the institutions that control his benefits and the attorney associated with depriving him of those benefits. *Id*. at 13. Accordingly, only Dr. Schaeffer affirmatively related Claimant's psychological state after July 2000 to his 1982 workplace accident.

C(3)(b) Experts Relating that Claimant's Current Psychological Injuries Are Not Due to His 1982 Workplace Accident

On August 9, 1996, Dr. Maggio, noted that Claimant was no longer openly hostile, assaultive or vindictive in speaking about Employer. (EX 9, p. 5). Dr. Maggio's diagnostic impression was that Claimant had adjustment disorder with depressed mood - resolved and compensated - and a personality disorder with features of paranoia, dependency, obsessive compulsiveness and histrionic disorder. *Id*. Dr. Maggio stated:

> In summary we have a man who . . . has had a great deal of anger, hostility and venom that was really due to his preexistant Personality Disorder but also a superimposed Adjustment Disorder with Depressed Mood. He has been seen and treated by three psychiatrists adequately and his Adjustment Disorder is resolved and compensated. This part was work related. . . . In addition he has a Personality Disorder which antedated his injury to his knee in 1982 and benefits from supportive psychotherapy. This part is not work related.

(EX 9, p. 6).

Dr. Maggio reiterated this conclusion in his January 2001 evaluation. (EX 9, p. 10). It was Claimant's personality disorder that caused him to have anger, bitterness, resentment, and caused his vitriolic remarks. *Id*. at 8. Claimant related that his condition was aggravated by what he perceived as Employer's efforts to cause him grief and worry. *Id*. Dr. Maggio observed that Claimant's speech was not focused on victimization, anger or bitterness and he was no longer openly hostile, assaultive or vindictive. *Id*. at 9. Rather Claimant's mood was euthymic. *Id*.

On July 19, 2000, Dr. Price opined that Claimant had a multitude of psychological stressors that were totally unrelated to his cause of action and those stressors were sufficient to cause Claimant's depression and anxiety. (EX 10, p. 26). At at some point in time Claimant likely met the diagnostic criteria for adjustment disorder following his knee injury and surgery. (EX 10, p. 43). Generally an adjustment disorder appears within three months of the stressor and persists no longer than six months. *Id*. The maladaptive nature of the reaction is indicated by either an impairment in social or occupational functioning or by symptoms that are in excess of a normal or expected reaction. *Id*. The adjustment reaction may last longer in cases where it is related to a chronic stressor - such as a disabling medical condition - or continuing emotional and financial difficulties. *Id*. The fact that Claimant's adjustment disorder persisted for such a long time was most likely due to the "persistence and addition of other psychosocial stressors unrelated to the cause of action, combined with Mr. Moore's inflexible and maladaptive personality traits." *Id*. at 45. Most likely Claimant' adjustment disorder was in remission and compensated for at the time he saw Dr. Maggio on August 9, 1996. *Id*.

According to Dr. Price, Claimant's psychological condition was attributable to other stressors such as middle age, marital, occupational , physical, and parenthood changes. (EX 10, p. 50). Claimant is also faced with the reality of being the primary care-giver to some of his grandchildren and is faced with associated custody disputes. *Id*. at 51. Claimant was predisposed to suffer from

stress because he was a poor man with little education and little vocational opportunity. *Id*. Dr. Price listed numerous stressors in Claimant's life, pre and post-accident that could cause an adjustment disorder apart from the 1982 workplace accident. *Id*. at 52.

Dr. Price also explained that in his opinion Claimant did not have major depression, but more likely had Dysthymic Disorder, or an inborn tendency to experience a depressed mood. (EX 10, p. 54-55). Such a disorder had an "insidious onset" and becomes crystalized when there is an element of secondary reinforcement. *Id*. at 55. Dr. Price concluded:

> The only psychiatric diagnosis in this case that is causally related to the work accident is that of an Adjustment Disorder. This diagnosis, with proper treatment, would be expected to resolve within a very brief period of time, It is most likely that in the instant case, the Adjustment Disorder related to the work-place accident has resolved. Symptoms are being maintained by unrelated psychosocial stressors and underlying Personality Disorders. Treatment is being continued for litigation building reasons.

(EX 10, p. 78) (emphasis in original).

C(3)(c) Weighing the Conflicting Evidence

Based on the record as a whole, I find that Claimant does have a personality disorder that pre-dates his 1982 workplace accident. On April 16, 1985, Dr. Martin opined that Claimant had a mixed personality disorder with paranoid and passive aggressive features. (CX 15, p. 2). Although not specifically stating that Claimant had a personality disorder, Dr. Sonego stated that he agreed with Dr. Martin's impression. (CX 16, p. 1). Dr. Maggio clearly stated that Claimant had a pre-exiting personality disorder with paranoia, dependency obsessive compulsiveness and histronic features. (EX 9, p. 5). Dr. Schaeffer disagreed with Dr. Maggio's impression that Claimant had a personality disorder because after so many years of dealing with disability and chronic pain people develop dependent, obstinate, stubborn, angry and paranoid traits. (CX 14, p. 34-35). Nevertheless, Dr. Schaefer admitted that based on Claimant's history he was predisposed to becoming susceptible to psychiatric trauma. *Id*. at 37. Considering Dr. Martin's impression that Claimant had a personality disorder in 1985, much closer to the time of the accident than when Dr. Schaeffer treated Claimant, I find that the evidence preponderates that Claimant had a pre-existing personality disorder.

All psychiatrists, and Dr. Price, agree that Claimant suffered an adjustment disorder as a result of his workplace accident and depression over his resultant physical disability. Based on the record as a whole I find that Claimant still suffers from these conditions and that the conditions are a result of his workplace accident or, if not a direct cause, then Claimant's workplace accident aggravated an underlying psychological predisposition for an adjustment disorder and depression. Significantly, Dr. Martin stated in 1986 that Claimant's psychiatric morbidity "may prove to be long term." (CX 15, p. 20). Dr. Sonego related in 1986 that Claimant would need "regular supportive psychotherapy," and in 1989, Dr. Sonego stated that Claimant continued to struggle with depression

and anxiety related to his physical limitations. (CX 16, p. 1, 4). Dr. Schaeffer stated on April 4, 2002, that to a reasonable degree of medical probability Claimant's treatments as of that date were causally related to his 1982 workplace accident. (CX 14, p. 10).

While Dr. Price stated that an adjustment disorder is a temporary condition, he stated that adjustment reactions last longer whenever there is a chronic stressor. (EX 10, p. 43). Dr. Price related that such chronic stressors could include a disabling medical condition or financial difficulties. *Id*. I note that Claimant has several chronic stressors that are a direct result of his 1982 workplace accident. First, Claimant is totally and permanently disabled and has chronic pain. (EX 1, p. 17). Also, as a result of his total disability, Claimant cannot work and on numerous occasions over the years Employer has denied payment for Claimant's medical bills and wage benefits creating a financial stressor. For example, in January 1986, Dr. Martin related that Claimant and his family continued to "eke" out a "meager existence" pending resolution of Claimant' compensation benefits and Claimant was facing legal action by two hospitals for non-payment. (CX 15, p. 16). In October 1996, Dr. Schaeffer reported that Claimant was depressed and angry over Employer's termination of psychiatric care, which was not reinstated until January 1998. (CX 7, p. 21-22, 26, 33). Thus, I find that Claimant has "chronic stressors" of "enduring consequences" that would extend the life of his adjustment disorder with depressive mood, and the chronic stressors are a direct result of his workplace accident. Dr. Price also stated that Claimant was particularly vulnerable to psychological stressors because he was a poor man with limited education and little vocational opportunity. (EX 10, p. 51). Accordingly, I assign less weight to the opinion of Dr. Price that Claimant's adjustment disorder had resolved by July 2000.[2]

Likewise, I give less weight to Dr. Price's opinion that Claimant did not have depression, but only had a dysthymic disorder which was brought on by desire to obtain secondary gains. Specifically, Dr. Price's impression that Claimant was a malinger was based on his observation that Claimant was a marginal member of mainstream society, had a poor work history, had poor credibility, was dishonest, and had anti-social, narcissistic or borderline personality disorder. (EX 10, p. 57; CX 7, p. 124). As related by Dr. Schaeffer, who had twelve years of contact with Claimant, many of these factors did not have merit and were not supported by Claimant's psychiatric records. (CX 7, p. 124).

Dr. Maggio opined that Claimant's adjustment disorder and depressed mood had resolved by the time of his examination in August 1996, and he related that Claimant's current psychological status was due only to his pre-existing personality disorder. (EX 9, p. 6, 10). I note, however, that Dr. Maggio evaluated Claimant while he was undergoing regular treatments with Dr. Schaeffer in supportive psychotherapy, which deflated Claimant's depressive symptoms, homicidal feelings,

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[2] Dr. Price also identified many other life stressors that could cause Claimant's psychological state, but finding that Claimant suffered from chronic stressors related to his workplace accident which perpetuated his adjustment disorder, I credit the opinion of Dr. Schaeffer that Claimant's capacity to deal with other non work-related stressors was diminished as a result of his workplace injuries. (CX 1, p. 35, 46; EX 10, p. 52).

irritability, and social withdraw. (CX 7, p. 124). Because Claimant was psychologically sedated, Dr. Maggio observed that Claimant was "no longer openly verbally hostile, assaultive or vindictive." (EX 9, p. 9). Additionally, Dr. Maggio related that Claimant had a personality disorder, but did not state whether that personality disorder was aggravated by Claimant's workplace accident after July 2000. Furthermore, Dr. Schaeffer stated that he and Claimant continued to talk about chronic pain and Claimant's resultant depression after July 2000. (CX 14, p. 18). Because Claimant was psychologically sedated during Dr. Maggio's interview, and because Dr. Maggio only had the opportunity to meet Claimant on two occasions as opposed to the twelve years that Dr. Schaeffer had treated Claimant, I accord Dr. Maggio's opinion that Claimant's adjustment disorder and depressive mood were resolved less weight.

Therefore, I find that Claimant's psychological condition after July 2000 is causally related to his 1982 workplace accident because psychiatrists Drs. Martin and Sonego opined that Claimant's psychological state was of long term duration, and Dr. Schaeffer directly related Claimant's psychological condition after July 2000 to his workplace injury. Furthermore, Dr. Price related that an adjustment disorder, although normally of a short duration, could be chronic when the patient also has a chronic stressor such as a physical disability or financial difficulties. Claimant has both as chronic stressors and, according to Dr. Price, is predisposed to suffer psychological stress because he is uneducated, poor and had little vocational opportunity. I accord more weight to the opinion of Dr. Schaeffer than Dr. Maggio because Dr. Schaeffer was in a better position to evaluate the etiology of Claimant's psychological problems after twelve years of personal contact, and when Dr. Maggio evaluated Claimant, he was undergoing supportive psychotherapy with Dr. Schaeffer which had the effect of deflating Claimant's anger, homicidal impulses, and depression, which were factors Dr. Maggio relied on in determining that Claimant's adjustment disorder had resolved.

Reasonable and Necessary Medical Treatment

Claimant asserts that he is entitled to weekly supportive psychotherapy sessions with Dr. Schaeffer. Section 7(a) of the Act provides that "the employer shall furnish such medical, surgical, and other attendance or treatment . . . for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. § 907(a) (2001). The Board has interpreted this provision to require an employer to pay all reasonable and necessary medical expenses arising from a workplace injury. *Dupre v. Cape Romaine Contractors, Inc.*, 23 BRBS 86 (1989).

The presumptions of Section 20 apply in a determination of the necessity and the reasonableness of medical treatment. 33 U.S.C. § 920 (2001)(stating that "it shall be presumed in the absence of substantial evidence to the contrary - (a) That the claim comes within the provisions of this chapter. . . ."); *Amos v. Director, OWCP*, 153 F.3d 1051, 1054 (9th Cir. 1998), *amended by* 164 F.3d 480 (9th Cir. 1999), *cert denied*, 528 U.S. 809, 120 S. Ct. 40, 145 L. Ed. 2d 36 (1999)(finding a difference of opinion among physicians concerning treatment and deciding the issue based on the whole record); *Turner v. Chesapeake & Potomac Tel. Co.*, 16 BRBS 255, 257-58 (1984). Under the Administrative Procedures Act, however, a claimant has the ultimate burden of persuasion by a preponderance of the evidence. *Greenwich Collieries*, 512 U.S. at 281. The Section

20 presumptions were left untouched by *Greenwich Collieries*. *Id* at 280. Accordingly, once a claimant has established a *prima facie* case that medical treatment is reasonable and necessary, the employer must produce contrary evidence, and if that evidence is sufficiently substantial, the presumption dissolves and claimant is left with the ultimate burden of persuasion. *American Grain Trimmers, Inc. v. Director, OWCP*, 181 F.3d 810, 816-17 (7th Cir. 1999). Thus, the burden that shifts to the employer is the burden of production only. *Id*. at 817.

(1) Establishing a *Prima Facie* Case of Reasonableness and Necessity

A claimant establishes a *prima facie* case when a qualified physician indicates that treatment is necessary for a work-related condition. *Romeike v. Kaiser Shipyards*, 22 BRBS 57, 60 (1989); *Pirozzi v. Todd Shipyards Corp.*, 21 BRBS 294, 296 (1988). Here, Dr. Schaeffer, Claimant's treating psychiatrist, recommended that Claimant undergo weekly supportive psychotherapy for treatment of a work-related condition. (CX 7, p. 125; CX 14, p. 40). Thus, one of Claimant's treating physicians recommended a specific procedure for recovery from a workplace accident and Claimant is willing to undergo that treatment, which establishes a *prima facie* case that the treatment is both reasonable and necessary.

(2) Rebuttal of the Presumption

Once a claimant establishes a *prima facie* case, the employer bears the burden of showing by substantial evidence that the proposed treatment is neither reasonable nor necessary. *Salusky v. Army Air Force Exchange Service*, 3 BRBS 22, 26 (1975)(stating that any question about the reasonableness or necessity of medical treatment must be raised by the complaining party before the ALJ). The Fifth Circuit uses a substantial evidence test in determining if an employer presented sufficient evidence to overcome a Section 20 presumption. *See Conoco, Inc., v. Director, OWCP*, 194 F.3d 684, 687-88 (5th Cir. 1999)(stating that "[o]nce the presumption in Section [20] is invoked, the burden shifts to the employer to rebut it through facts - not mere speculation - that the harm was not work-related.")(citing, *Bridier v. Alabama Dry Dock & Shipbuilding Corp.* , 29 BRBS 84 (1995)); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141, 144 (1990); *Smith v. Sealand Terminal*, 14 BRBS 844 (1982).

Employer has not presented substantial evidence that Claimant's treatment is unreasonable or unnecessary. On September 14, 2000, Dr. Schaeffer wrote to Claimant's attorney regarding Employer's termination of psychiatric benefits based on the report of Dr. Price. (CX 7, p. 124). Dr. Schaeffer reported that he had successfully treated Claimant by deflating his depressive symptoms, homicidal feelings, irritability, and social withdraw, which were all symptoms of his 1982 workplace accident. *Id*. Without continued treatment Claimant was at risk to becoming more withdrawn, more depressed, more disabled, more uncomfortable, and less functional. *Id*. Dr. Schaeffer's recommended treatment was weekly psychotherapy. *Id*.

On December 20, 2001, Dr. Schaeffer related that he continued to treat Claimant, but Claimant was forced to reduce the frequency of his visits to once every two weeks due to his limited finances. (CX 7, p. 126). As a consequence, Claimant had become more prone to depressive moods,

typically precipitated by his frequent bouts of diffuse pain, and Claimant found it harder to be more productive and do things that enhanced his morale. (CX 7, p. 126; CX 14, p. 34). The danger of failing to authorize weekly treatments was that Claimant's depression and anger, bordering on homicidal impulses, were subject to re-emergence to a crisis proportion. (CX 7, p. 126).

Regarding Dr. Price's assertion that Claimant and Dr. Schaeffer were talking about subjects that had no obvious bearing to the 1982 injury, Dr. Schaeffer explained that such a comment was misguided because Claimant was in therapy to understand and improve his emotional life which necessitated talking about everything in Claimant's life. (CX 14, p. 15-16). Furthermore, Dr. Schaeffer's notes do not reflect everything he spoke with Claimant about, and he would not make repetitive entries. *Id*. at 16. He did speak with Claimant on a frequent basis about his pain even though it was not recorded. *Id*. Additionally, Dr. Schaefer justified sessions about Claimant's family and friends because Claimant's ability to cope with emotional pressures was decreased as a result of his loss of ability to function secondary to chronic pain. *Id*. at 22.

While Dr. Schaeffer's treatment may have terminated with another individual with the same problems long ago, Dr. Schaeffer was guided by the reaction of Claimant to therapy and as long as it had a positive effect Dr. Schaeffer saw no reason to quit and worried that Claimant would regress if deprived of treatment. (CX 14, p. 31-32, 34). It would be impossible to "chop up" treatment so that he could address only the work-related psychiatric problems because recovering from a psychiatric injury required a treatment of the whole person. *Id*. at 47. Although Claimant could "survive" with less frequent contact with Dr. Schaeffer, Claimant would more likely "thrive" by having more frequent contacts. *Id*. at 40.

I note that Dr. Martin treated Claimant every two to three weeks. (CX 15, p. 3-18). Dr. Sonego treated Claimant about once per month and opined that Claimant would need "infrequent, but regular supportive psychotherapy." (CX 16, p. 1, 4). After Employer terminated medical benefits, Claimant treated with Dr. Schaeffer once every two weeks. (CX 7, p. 126). There is no dispute in the record that Claimant's contacts with Dr. Schaeffer have helped Claimant in coping with his permanent total disability, depression, and the psycho-social ramifications of his workplace injury.

Reviewing the record as a whole, I find that Clamant is entitled to treatment with Dr. Schaeffer on a weekly basis. While Claimant can clearly "survive" with less frequent contacts, the purpose of the Act is to help longshore workers and to make them whole, as near as possible, for their injuries. *See generally* 33 U.S.C. § 907(a) (2001) (stating that the employer shall furnish medical treatment "for such period as the nature of the injury or the process of recovery may require."); *Reed v. Steamship Yaka*, 373 U.S. 410, 415, 83 S. Ct. 1349, 1353 (1963) (stating that the Act must be liberally construed in conformance with its purpose). Dr. Schaeffer was clear that since Claimant had reduced the frequency of his visits, Claimant had become more prone to depressive moods and Claimant found it harder to be more productive and do things that enhanced his moral. The danger of failing to authorize weekly treatments was that Claimant's depression and anger, bordering on homicidal impulses, were subject to re-emergence to a crisis proportion. While the "process of recovery" may require long and frequent contacts with a psychiatrist, that does not make

the treatment unreasonable or unnecessary.[3]

E. Medical Authorization

Claimant asserts that he is entitled to treatment with Dr. Diana Ross, a neurosurgeon specializing in chronic pain, and with Dr. Schaeffer, his psychiatrist. In general an employer found liable for the payment of compensation is, pursuant to Section 7(a) of the Act, responsible for those medical expenses reasonably and necessarily incurred as a result of a work-related injury. *Perez v. Sea-Land Services, Inc.*, 8 BRBS 130 (1978). The test is whether or not the treatment is recognized as appropriate by the medical profession for the care and treatment of the injury. *Colburn v. General Dynamics Corp.*, 21 BRBS 219, 222 (1988); *Barbour v. Woodward & Lothrop, Inc.*, 16 BRBS 300 (1984). Entitlement to medical services is never time-barred where a disability is related to a compensable injury. *Addison v. Ryan-Walsh Stevedoring Co.*, 22 BRBS 32, 36 (1989); *Mayfield v. Atlantic & Gulf Stevedores*, 16 BRBS 228 (1984); *Dean v. Marine Terminals Corp.*, 7 BRBS 234 (1977). Furthermore, an employee's right to select his own physician, pursuant to Section 7(b), is well settled. *Bulone v. Universal Terminal and Stevedore Corp.*, 8 BRBS 515 (1978). Claimant is also entitled to reimbursement for reasonable travel expenses in seeking medical care and treatment for his work-related injury. *Tough v. General Dynamics Corporation*, 22 BRBS 356 (1989); *Gilliam v. The Western Union Telegraph Co.*, 8 BRBS 278 (1978).

In *Shahady v. Atlas Title & Marble*, 13 BRBS 1007 (1981), *rev'd on other grounds*, 682 F.2d 968 (D.C. Cir. 1982), the Benefits Review Board held that a claimant's entitlement to an initial free choice of a physician under Section 7(b) does not negate the requirement under Section 7(d) that claimant obtain employer's authorization prior to obtaining medical services. *Banks v. Bath Iron Works Corp.*, 22 BRBS 301, 307, 308 (1989); *Jackson v. Ingalls Shipbuilding Division, Litto Systems, Inc.*, 15 BRBS 299(1983); *Beynum v. Washington Metropolitan Area Transit Authority*, 14 BRBS 956 (1982). Under Section 7(d)(1), an injured employee cannot receive reimbursement for medical expenses which he provided payment unless he has first requested authorization, prior to obtaining the treatment, except in cases of emergency, refusal, or neglect. 20 C.F.R. § 702.421; *Shahady v. Atlas Tile & Marble Co.*, 682 F.2d 968 (D.C. Cir. 1982) *rev'g* 13 BRBS 1007 (1981); *McQuillen v. Horne Bros., Inc.*, 16 BRBS 10 (1983). The burden of proof regarding compliance with this requirement is on the employee. *Maryland Shipbuilding & Drydock Co. v. Jenkins*, 594

[3] At hearing, Employer also argues that Dr. Schaeffer's hourly fee of $150.00 was excessive and not in keeping with the prevailing charges of the community in light of the fact that Medicare would only pay $85.24 per visit. (CX 14, p. 43). Dr. Schaeffer testified, however, that his fee was the customary amount charged within his community for psychiatric services. *Id*. at 45. Having no other evidence on the issue, and noting that the District Director is the proper entity to make a determination on whether charges exceed the prevailing community rate, I cannot say that Dr. Schaeffer's charges are unreasonable. *See* 33 U.S.C. § 907(b) (2001); *Weikert v. Universal Marine Service Corp.*, BRB No. 01-552 (March 21, 2002) (stating that "[a]ctive supervision of a claimant's medical care is performed by the Secretary of Labor and her delegates, the district directors.").

F.2d 404, 407, 10 BRBS 1, 8 (4th Cir. 1979), *rev'g* 6 BRBS 550 (1977).

Pursuant to Section 7(c)(2) of the Act an employer must authorize medical treatment by a claimant's physician of choice. However, once a claimant has made his initial, free choice of physician, he may change physicians only upon obtaining prior written approval of the employer, carrier, or deputy commissioner. 33 U.S.C. § 907(c)(2); 20 C.F.R. § 702.406. A claimant's right to an initial free choice of physician pursuant to Section 7(b) does not negate the prior request requirement. *Beynum v. Washington Metro. Area Transit Auth.*, 14 BRBS 956 (1982); *Betz v. Arthur Snowden Co.*, 14 BRBS 805 (1981). The employer will ordinarily not be responsible for the payment of medical benefits if the claimant fails to obtain the required authorization. *Slattery Assocs. v. Lloyd*, 725 F.2d 780, 787 (D.C. Cir. 1984); *Swain v. Bath Iron Works Corp.*, 14 BRBS 657, 664 (1982). Consent to change physicians shall be given when the claimant's initial choice was not a specialist whose services are necessary and appropriate for proper care an treatment.

Regarding Claimant's treatment with Dr. Ross, I note that Dr. Longnecker referred Claimant to see Dr. Ross on June 4, 1998 for evaluation/disposition of chronic pain and migraine headaches. (CX 12, p. 119). Dr. Longnecker, Claimant's treating physician, was an orthopaedist, and Dr. Ross was a neurological pain management specialist. On June 4, 1998, Dr. Ross conducted a neurological consultation in relation to his chronic pain. (CX 13, p. 2). Because Claimant was "doing fairly well" with post-traumatic headaches, and they were treatable with prescription medication, Dr. Ross merely recommended a continuation of his medication and scheduled Claimant for a follow-up appointment a year later. *Id*. at 4. Accordingly, Claimant's treating physician referred Claimant to a specialist, Claimant sought authorization, and that authorization was refused. Accordingly, I find that Claimant is entitled to treatment with Dr. Ross and Employer must pay/reimburse for those treatments.

In light of my finding, *supra*, that Claimant is entitled to weekly supportive psychotherapy sessions with Dr. Schaeffer, I find that Claimant is entitled to mileage expenses for those office visits, as well as his visits to Dr. Ross.

G. Conclusion

I find that Claimant made a credible witness. Based on the record as a whole, I find that Claimant has a personality disorder which pre-dates his 1982 workplace accident. Following Claimant's accident, he suffered from adjustment disorder and depression which was aggravated by chronic stressors such as chronic pain, permanent total disability and financial worries as a result of Employer's failure to pay medical benefits. Claimant established entitlement to weekly supportive psychotherapy sessions with Dr. Schaeffer
because while Claimant could "survive" with less contact, he would be more prone to depressive moods have difficulty being productive and suffer a low moral, which could cause his depression, anger and homicidal impulses to re-emerge on a crisis proportion. Claimant also established entitlement to treatment with Dr. Ross because Dr. Longnecker made the referral for a specific treatment outside of his area of expertise.

H. Interest

Although not specifically authorized in the Act, it has been an accepted practice that interest at the rate of six per cent per annum is assessed on all past due compensation payments. *Avallone v. Todd Shipyards Corp.*, 10 BRBS 724 (1974). The Benefits Review Board and the Federal Courts have previously upheld interest awards on past due benefits to insure that the employee receives the full amount of compensation due. *Watkins v. Newport News Shipbuilding & Dry Dock Co., aff'd in pertinent part and rev'd on other grounds, sub nom. Newport News v. Director, OWCP*, 594 F.2d 986 (4th Cir. 1979). The Board concluded that inflationary trends in our economy have rendered a fixed six per cent rate no longer appropriate to further the purpose of making Claimant whole, and held that "the fixed per cent rate should be replaced by the rate employed by the United States District Courts under 28 U.S.C. § 1961 (1982). This order incorporates by reference this statute and provides for its specific administrative application by the District Director. *See Grant v. Portland Stevedoring Company, et al.*, 17 BRBS 20 (1985). The appropriate rate shall be determined as of the filing date of this Decision and Order with the District Director.

I. Attorney Fees

No award of attorney's fees for services to the Claimant is made herein since no application for fees has been made by the Claimant's counsel. Counsel is hereby allowed thirty (30) days from the date of service of this decision to submit an application for attorney's fees. A service sheet showing that service has been made on all parties, including the Claimant, must accompany the petition. Parties have twenty (20) days following the receipt of such application within which to file any objections thereto.

VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and upon the entire record, I enter the following Order:

1. Employer shall authorize and pay/reimburse Claimant for weekly supportive psycho-therapy sessions with Claimant's psychiatrist, Dr. Schaeffer pursuant to Section 7(a) of the Act..

2. Employer shall authorize and pay/reimburse Claimant for treatment with Dr. Ross pursuant to Section 7(a) of the Act.

3. Claimant is entitled to interest on accrued unpaid compensation benefits. The applicable rate of interest shall be calculated immediately prior to the date of judgment in accordance with 28 U.S.C. §1961.

4. Claimant's counsel shall have thirty (30) days to file a fully supported fee application with the Office of Administrative Law Judges, serving a copy thereof on Claimant and opposing counsel who shall have twenty (20) days to file any objection thereto.

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CLEMENT J. KENNINGTON
Administrative Law Judge